

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

<b>KAREN L. BROWN</b>	)	
Claimant	)	
VS.	)	
	)	
<b>BUILDERS SQUARE</b>	)	Docket Nos. 211,487;
Respondent	)	211,488; & 213,469
Self-Insured	)	

**ORDER**

Respondent appeals from a preliminary hearing Order entered by Administrative Law Judge Floyd V. Palmer on May 23, 1997.

**ISSUES**

Respondent alleges that the Administrative Law Judge exceeded his jurisdiction when he granted temporary total disability and medical benefits because the evidence does not establish that claimant suffered an accidental injury or that her injury arose out of and in the course of her employment.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the record and considering the arguments, the Appeals Board finds that the Order by the Administrative Law Judge should be affirmed.

The evidence establishes that first on November 9, 1995, and again on November 18, 1995, claimant was accosted by a customer she was waiting on in the course of her duties for respondent. The customer grabbed her and on the second occasion grabbed her neck. Claimant testified that she suffered a physical injury to her neck and shoulder as a result of this incident, in part from her reaction or resistance. Claimant alleges both physical and psychological injuries and seeks treatment for both, as well as temporary total disability benefits.

Respondent disputes claimant's testimony and points to several factors which underline the credibility of her testimony. Respondent points out, for example, that claimant suffered a subsequent workers compensation injury in January of 1996, but the records from the treating physician do not show any mention of physical injuries to the neck and shoulder as alleged here. Respondent also points out that claimant continued to work for a number of months after the incident, left employment for other reasons, and, after leaving employment for respondent, received unemployment compensation benefits.

Claimant on the other hand points out the testimony of not only the claimant but that of Dr. Sharon L. McKinney and Dr. Joel H. Nance. Dr. Nance indicates claimant has psychological problems which, according to Dr. Nance, meet the criteria for post-traumatic stress disorder directly related to the incidents at work on November 9 and 18, 1995.

The Appeals Board has limited jurisdiction on appeals from preliminary hearing orders. The Appeals Board may review allegations that the Administrative Law Judge exceeded his jurisdiction, including allegations that the Administrative Law Judge erred on jurisdictional issues listed in K.S.A. 1996 Supp. 44-534a.

Based upon the evidence presented, the Appeals Board affirms the finding by the Administrative Law Judge that claimant sustained a physical injury arising out of and in the course of employment. The Appeals Board does so, in part, based on deference to the Administrative Law Judge's opportunity to view claimant's live testimony. Other issues presented by this appeal are not subject to review. The Appeals Board has, for example, on several occasions indicated that a finding that psychological problems were or were not directly traceable to a physical injury is not a jurisdictional issue. Similarly, whether claimant is currently temporarily totally disabled or whether claimant is currently in need of medical treatment are not jurisdictional issues.

**WHEREFORE**, the Appeals Board finds that the Order by Administrative Law Judge Floyd V. Palmer should be, and the same is hereby, affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of August 1997.

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BOARD MEMBER

c: Robert E. Tilton, Topeka, KS  
Matthew J. Stretz, Kansas City, MO  
Floyd V. Palmer, Administrative Law Judge  
Philip S. Harness, Director